

2007 MINUTES OF THE STATE BOARD OF EQUALIZATION

Tuesday, February 27, 2007

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Ms. Yee, Chairwoman, Ms. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

UCI University Club, 290120 (EA)

4-1-01 to 3-31-04, \$25,385.98 Tax

For Petitioner:

Suzanne Beaudelaire, Representative

Dave Tomcheck, Representative

For Department:

Robert Stipe, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether membership fees charged by petitioner are part of taxable gross receipts.

Action: Upon motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be returned to the district for a reaudit.

Eugene Tripp, 286863 (AS)

10-1-00 to 5-27-04, \$30,125.58 Tax, \$3,047.37 Negligence Penalty

For Petitioner:

Eugene Tripp, Taxpayer

For Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the audited understatement of reported taxable sales.

Whether petitioner was negligent.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

DC Motors, LLC, 285802 (EA)

10-1-00 to 9-30-03, \$12,207.38 Tax

For Petitioner:

Doug Ramirez, Taxpayer

For Department:

Robert Stipe, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is liable for use tax for two sales of vehicles to California residents.

Whether a down payment that petitioner received represents gross receipts subject to tax.

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

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2007 MINUTES OF THE STATE BOARD OF EQUALIZATION

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Carpet U.S.A., Ltd., 299501 (AS)

1-01-00 to 12-31-02, \$35,022.88 Tax, \$ 3,502.28 Negligence Penalty

For Petitioner:

Jerry Agam, Taxpayer

Lien Tien, Accountant

For Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that it is entitled to further adjustments.

Whether petitioner was negligent.

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Hosmer Chandler McKoon, 273016 (EA)

7-1-98 to 5-28-99, \$55,525.90 Tax, \$9,794.86 Penalty

For Petitioner:

Hosmer McKoon, Taxpayer

Dennis Connelly, Attorney

Lois McKoon, Witness

For Department:

Robert Stipe, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is personally liable for the unpaid tax, penalty, and interest of MPS Photographic Services, Inc.

Whether the determination is barred by the statute of limitations.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Elier A. Rivera, 259745 (AA)

7-1-02 to 6-12-03, \$96,115.12 Tax

For Petitioner:

Elier Rivera, Taxpayer

For Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is subject to personal liability as a responsible person for the tax liability incurred by Vacer, Inc., doing business as a used car retailer known as ER Automotive Group.

Whether the liability should be reduced for bad debts.

Action: Upon motion of Ms. Steel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

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2007 MINUTES OF THE STATE BOARD OF EQUALIZATION

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LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *B & R Industries, Inc., 254513.*

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Mandel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

B & R Industries, Inc., 254513 (EA)

10-1-97 TO 8-12-00, \$400,000.00 Successor Liability

Action: The Board took no action.

Paul Marcynyszyn, 266730 (EH)

1-1-00 to 6-30-03, \$20,726.83 Tax, \$2,072.70 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Acromedia Systems, Incorporated, 288207 (AS)

7-1-03 to 9-30-03, \$3,461.00 Tax

Oliver P. Lasley, 288208 (AS)

4-1-95 to 10-31-03, \$47,250.27 Tax, \$13,569.70 Penalty

Merle Janine Vaughn, 288209 (AS)

4-1-95 to 10-31-03, \$47,250.27 Tax, \$13,569.70 Penalty

Action: Redetermine as recommended by the Appeals Division.

Le Roy Properties, Inc., 272699 (EH)

4-1-01 to 3-31-04, \$67,501.22 Tax

Action: Redetermine as recommended by the Appeals Division.

Ascend Communications, Inc., 253790, 297471 (CH)

1-1-98 to 12-31-01, \$2,204,281.15 Tax

Action: Redetermine as recommended by the Appeals Division.

Roy's Liquor & Market, Inc., 380233 (ET)

October 2, 2006, \$173.88 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Elma Margarita Fernandez, 383169 (ET)

September 5, 2006, \$340.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Ronald C. Nelson, 329716; Walter J. Kubon, Jr., 337056.*

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2007 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, February 27, 2007**

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Cheryl Lynn Blankenbiller, 333115

2003, \$3,964.00 Tax, \$991.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Arnold Bryman, 342582

2001, \$280.75 Claim for Refund

2002, \$2,657.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Thomas R. Camerato, 311016

1992, \$411.00 Assessment

1993, \$427.00 Assessment

Action: Modify the action of the Franchise Tax Board.

Stewart B. Cole, 341511

1997, \$10,597.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Regine De Guzman, 349011

2004, \$758.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

DPEX, Inc., 287820

2001, \$1,574.69 Assessment

Action: Dismiss for lack of jurisdiction.

Jennifer G. Frost, 346081

2001, \$5,184.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Mansour Khajehjahromi, 348938

2000, \$1,949.00 Assessment

Action: Modify the action of the Franchise Tax Board.

Joel Kreiner, 340869

1996, \$77,710.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Gregory H. Mikkelsen, 343668

2004, \$100.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ronald C. Nelson, 329716

1985, \$1,048.54 Accrued Interest

Action: The Board took no action.

Mohammad H. Nili, 349309

2000, \$7,799.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Steven A. Schellenger, 341905

2002, \$378.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Derrick R. Stephens, 330557

2003, \$1,141.00 Assessment

Action: Sustain the action of the Franchise Tax Board

John S. Ballard, 339524

2003, \$8,428.00 Tax, \$4,214.00 Late Filing and Notice and Demand Penalties

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Rick Burningham, 330830

2003, \$2,210.00 Assessment, \$553.50 Failure to File Penalty, \$635.00 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Tennison Dong, 339976

2003, \$4,288.00 Tax, \$2,144.00 Penalties, \$90.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Andrea Erickson, 330530

2002, \$1,699.00 Tax

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Robert Frankson, 316456

2002, \$4,825.00 Tax, \$2,412.50 Penalties, \$90.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

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2007 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, February 27, 2007****Patrick E. Galvin, 333157**

2003, \$452.00 Tax, \$680.50 Penalties, \$90.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Carol Grant, 328920

2003, \$2,168.00 Tax, \$1,084.00 Penalties

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Richard Grant, 335775

2003, \$1,526.00 Tax, \$763.00 Penalties

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Charles A. Harris, 328928

2003, \$3,328.00 Assessment, \$832.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Byron Hoffman, 327674, 339738

2002, \$6,364.00 Tax, \$1,591.00 Late-Filing Penalty

2003, \$5,479.00 Tax, \$2,739.50 Penalties, \$90.00 Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

David Klein, 316299, 342006

2002, \$2,723.00 Tax, \$680.75 Late-Filing Penalty

2003, \$1,759.00 Tax, \$879.50 Penalties, \$90.00 Enforcement Fee

Action: Sustain the modified action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Jackie Krienke, 337077

2002, \$877.00 Tax, \$438.50 Penalties, \$90.00 Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Walter J. Kubon, Jr., 337056

1999, \$12,895.00 Tax, \$13,067.50 Penalties

Action: The Board took no action.

Anthony Long, 343666

2001, \$2,398.00 Assessment

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

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2007 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, February 27, 2007****Elizabeth Magness, 343250**

2003, \$129.00 Tax, \$280.00 Penalties, \$120.00 Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Steven Nicholas, 340536

2003, \$10,103.00 Tax, \$5,051.50 Penalties, \$90.00 Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Anthony Oropeza, 333238

2003, \$5,565.00 Tax, \$1,391.25 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Jim Robertson, 342187

1998, \$14,538.00 Tax, \$7,019.00 Penalties

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Margaret L. Rogers, 330576, 331883, 332659

1999, \$2,328.00 Tax, \$582.00 Late Filing Penalty, \$90.00 Filing Enforcement Fee

2000, \$2,316.00 Tax, \$579.00 Penalties, \$108.00 Filing Enforcement Fee

2003, \$1,873.00 Tax, \$982.25 Penalties, \$90.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Roger Romero, 342029

2003, \$4,633.00 Tax, 1,158.25 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

George A. Saffas, 333072

2002, \$4,962.00 Tax, \$2,779.00 Penalties, \$90.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Gregory Stover, 341967

2003, \$1,353.00 Tax, \$681.75 Penalties

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

2007 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, February 27, 2007****Alice S. Willis, 333059**

2000, \$2,811.00 Tax, \$702.75 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Richard Wood, 339841

2003, \$384.00 Tax, \$196.00 Penalties

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Timothy Gallagher, 325457

2002, \$22,404.00 Assessment, \$5,601.00 Late Filing Penalty, \$500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Wayne E. Kean, 346182

2002, \$1,212.00 Assessment

Action: Deny the petition for rehearing.

John Laszloffy, 315489

2002, \$3,095.00, \$773.75 Late Filing Penalty, \$773.75 Notice and Demand Penalty

2003, \$3,647.00, \$911.75 Late Filing Penalty, \$911.75 Notice and Demand Penalty, \$5,000.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Leonard R. Magness, 268508

2001, \$1,965.00 Assessment, \$491.25 Failure to File Penalty

Action: Deny the petition for rehearing.

Parker G. Montgomery, 333233

1999, \$332,692.00 Assessment

Action: Deny the petition for rehearing.

Byron Reynolds, 267947

1999, \$2,153.00 Assessment, \$2,500.00 Frivolous Appeal Penalty

Action: Deny the petition for rehearing.

Clifford F. Swanke, 328680

2001, \$957.09 Claim for Refund

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred consideration of the following matter: *Stephanie D. Brown, 345106.*

Note: These minutes are not final until Board approved.

2007 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, February 27, 2007**

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Bryan Bailey, 332592

2005, \$265.00

Action: Sustain the action of the Franchise Tax Board.

Stephanie D. Brown, 345106

2005, \$347.50

Action: The Board took no action.

Jacqueline Carter, 347893

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

John Colasante, Jr., 332657

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Maria Guzman, 339337

2005, \$1,100.00

Action: Sustain the action of the Franchise Tax Board.

Dao Anhthi Nguyen, 329461

2005, \$429.69

Action: Sustain the action of the Franchise Tax Board.

Brenda Poston, 351154

2005, \$367.00

Action: Reverse the action of the Franchise Tax Board.

Robert Lewis Thelen, 349046

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Kathleen Yarussi, 352444

2002, \$346.00

Action: Sustain the action of the Franchise Tax Board.

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2007 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, February 27, 2007****SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *Applied Materials, Inc.*, 382613 and *Household Automotive Finance Corporation*, 381451, the Board made the following orders:

Pacific Union Company, 343237 (JH)

10-1-00 to 3-31-05, \$206,136.40

Action: Approve the redetermination as recommended by staff.

Recomm Wireless, Inc., 273014 (AC)

10-1-99 to 12-31-02, \$394,403.07

Action: Approve the redetermination as recommended by staff.

Coach, Inc., 349439 (OHB)

1-01-01 to 3-31-04, \$59,424.06

Action: Approve the redetermination as recommended by staff.

Lifoam Industries, LLC 342277 (OHB)

7-1-00 to 9-30-03, \$75,678.54

Action: Approve the redetermination as recommended by staff.

CMS Auto Body & Auto Sales, LLC, 260920 (AC)

4-1-00 to 12-31-02, \$56,988.82

Action: Approve the redetermination as recommended by staff.

Hamer Motors, Inc., 382609 (AC)

5-1-06 to 6-15-06, \$80,299.95

Action: Approve the relief of penalty as recommended by staff.

Applied Materials, Inc., 382613 (OHC)

7-1-06 to 7-31-06, \$54,000.00

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating.

NCR Corporation, 377413 (OHA)

10-1-98 to 12-31-01, \$97,812.02

Action: Approve the relief of penalty as recommended by staff.

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Hof's Hut Restaurants, Inc., 380115 (AA)

4-1-06 to 6-30-06, \$55,437.50

Action: Approve the relief of penalty as recommended by staff.

Serac, Inc., 379801 (OHA)

7-1-99 to 12-31-05, \$63,615.17

Action: Approve the relief of penalty as recommended by staff.

Intn'l Rehabilitative Sciences, Inc., 380327 (OH)

1-1-03 to 12-31-03, \$1,875,315.47

Action: Approve the denial of claim for refund as recommended by staff.

TDK Semiconductor Corporation, 383710 (EAA)

1-1-03 to 12-31-05, \$89,719.15

Action: Approve the denial of claim for refund as recommended by staff.

Household Automotive Finance Corporation, 381451 (FH)

1-1-03 to 12-31-04, \$286,089.71

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

The Board deferred consideration of the following matters: *Federated Pub Auction Agency of Upland, 382422 and Modern Finance Company, 378340.*

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in *Wells Fargo Leasing Corporation, 271455; Mercedes-Benz USA, LLC, 372995; Wells Fargo Bank (Auto Lease), 271676; STMicroelectronics (RB), Inc., 311985; Household Automotive Finance Corporation, 381452*, the Board made the following orders:

I.B.I. Leasing and Renting, Inc., 382338 (GH)

1-1-92 to 6-30-96, \$79,512.40

Action: Approve the credit and cancellation as recommended by staff.

Donald R. Loya, 260215 (AC)

1-1-01 to 3-31-02, \$511,354.58

Action: Approve the credit and cancellation as recommended by staff.

Heather L. Guilliom, 328132 (KHM)

1-3-00 to 6-30-04, \$216,510.87

Action: Approve the credit and cancellation as recommended by staff.

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ZN Corporation, 382341 (AS)

9-9-94 to 3-12-00, \$173,534.62

Action: Approve the credit and cancellation as recommended by staff.

Phase Shift Technology, Inc., 382907 (OH)

1-1-93 to 12-31-00, \$1,205,261.54

Action: Approve the credit and cancellation as recommended by staff.

Clear Story Systems, Inc. 382687 (OHB)

1-1-94 to 9-30-01, \$210,484.08

Action: Approve the credit and cancellation as recommended by staff.

De Won Motors Group, Inc., 382340 (AS)

1-1-01 to 12-31-03, \$96,088.14

Action: Approve the credit and cancellation as recommended by staff.

Abbey Auto Sales & Leasing, Inc., 382387 (FH)

5-28-93 to 9-30-99, \$55,607.50

Action: Approve the credit and cancellation as recommended by staff.

Feroz R. Jadhavji, 382408 (AC)

7-1-94 to 6-30-97, \$154,262.45

Action: Approve the credit and cancellation as recommended by staff.

Agorra Building Supply, Inc., 382391 (CH)

1-1-97 to 6-30-98, \$120,991.19

Action: Approve the credit and cancellation as recommended by staff.

Federated Auction Systems, Inc., 382437 (EH)

1-1-97 to 3-17-97, \$80,164.90

Action: Approve the credit and cancellation as recommended by staff.

Federated Pub Auction Agency of Upland, 382422 (EH)

1-1-97 to 3-31-97, \$52,978.81

Action: The Board took no action.

Herndon Enterprises, Inc., 382264 (KHO)

7-1-95 to 12-31-98, \$175,147.79

Action: Approve the credit and cancellation as recommended by staff.

Herndon Enterprises, Inc., 382336 (KHO)

7-1-99 to 2-06-02, \$160,572.82

Action: Approve the credit and cancellation as recommended by staff.

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CSC Outsourcing, Inc., 377099 (FH)

7-1-99 to 3-27-01, \$391,353.86

Action: Approve the refund as recommended by staff.

LagraphiCo.com, Inc., 240683 (AC)

4-1-00 to 12-31-03, \$609,179.62

Action: Approve the refund as recommended by staff.

Wells Fargo Leasing Corporation, 271455 (BH)

1-1-03 to 12-31-05, \$1,582,336.08

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

Southwick, Inc., 375279 (CH)

4-1-06 to 6-30-06, \$106,634.84

Action: Approve the refund as recommended by staff.

Bank of the West, 281359 (CH)

10-1-03 to 12-31-03, \$77,020.00

Action: Approve the refund as recommended by staff.

Credence Systems Corp, 351828 (GH)

7-1-02 to 6-30-05, \$201,794.72

Action: Approve the refund as recommended by staff.

Bobst Group, Inc., 367345 (OHB)

4-1-06 to 6-30-06, \$61,564.07

Action: Approve the refund as recommended by staff.

UMG Recordings, Inc., 350293 (OHB)

7-1-00 to 6-30-05, \$124,182.90

Action: Approve the refund as recommended by staff.

Cerner Corporation, 314681 (OHA)

7-1-02 to 9-30-02, \$67,237.38

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 372995 (KH)

9-11-06 to 9-11-06, \$262,031.00

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

California Capital Insurance Company, 379660 (GHC)

1-1-03 to 12-31-05, \$83,580.50

Action: Approve the refund as recommended by staff.

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General Instrument Corporation, 203863 (OHB)

10-1-99 to 6-30-03, \$289,782.49

Action: Approve the refund as recommended by staff.

Wells Fargo Bank (Auto Lease), 271676 (CH)

4-1-99 to 12-31-02, \$356,985.84

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

Meat and Potatoes, Inc., 325804 (AC)

4-1-02 to 9-30-05, \$78,320.36

Action: Approve the refund as recommended by staff.

Maria L. Magallanes, 344814 (ARH)

1-1-03 to 8-14-04, \$70,532.10

Action: Approve the refund as recommended by staff.

D.R. Systems, Inc., 381450 (FH)

10-1-02 to 12-31-05, \$390,308.95

Action: Approve the refund as recommended by staff.

Orange County Teachers Federal Credit Union, 380262 (EA)

1-1-03 to 12-31-05, \$175,300.68

Action: Approve the refund as recommended by staff.

Beverly Ent-Distribution Services, Inc., 313727 (OHA)

1-1-99 to 3-31-02, \$56,044.58

Action: Approve the refund as recommended by staff.

International Rehabilitative Sciences, Inc., 350673 (OH)

1-1-03 to 6-30-06, \$2,770,579.43

Action: Approve the refund as recommended by staff.

STMicroelectronics (RB), Inc., 311985 (OHC)

7-1-99 to 12-31-02, \$58,727.91

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

Medallion Landscape Management, Inc., 379663 (GH)

7-1-03 to 6-30-06, \$138,274.40

Action: Approve the refund as recommended by staff.

TDK Semiconductor Corporation, 353617 (EAA)

10-1-03 to 12-31-05, \$61,920.93

Action: Approve the refund as recommended by staff.

Note: These minutes are not final until Board approved.

2007 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, February 27, 2007**

Formtek Metal Forming, Inc., 344753 (OHB)

7-1-04 to 3-31-05, \$114,255.58

Action: Approve the refund as recommended by staff.

Modern Finance Company, 378340 (AC)

7-1-05 to 12-31-05, \$57,030.96

Action: The Board took no action.

Westlake Services, Inc., 339245 (AS)

1-1-03 to 12-31-05, \$885,898.85

Action: Approve the refund as recommended by staff.

Nuvision Financial Federal CU, 382413 (EA)

10-1-02 to 9-30-05, \$94,459.16

Action: Approve the refund as recommended by staff.

Point Loma Credit Union, 373988 (FH)

7-1-05 to 6-30-06, \$146,761.81

Action: Approve the refund as recommended by staff.

Point Loma Credit Union, 272758 (FH)

4-1-02 to 3-31-05, \$331,564.63

Action: Approve the refund as recommended by staff.

Household Automotive Finance Corporation, 381452 (FH)

1-1-03 to 12-31-04, \$6,125,313.53

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

Lexicon Marketing (USA), Inc., 381461 (AS)

1-1-03 to 3-31-06, \$214,475.05

Action: Approve the refund as recommended by staff.

Belkin Logistics, Inc., 374180 (AA)

1-1-06 to 3-31-06, \$57,634.14

Action: Approve the refund as recommended by staff.

Joginder Singh Virk, 330496 (EH)

11-20-03 to 6-30-06, \$97,646.58

Action: Approve the refund as recommended by staff.

Key Government Finance, Inc., 344755 (OHB)

1-1-04 to 12-31-05, \$176,468.60

Action: Approve the refund as recommended by staff.

Note: These minutes are not final until Board approved.

2007 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, February 27, 2007**

Cicoil Cable & Mgmt., Inc., 379719 (AR)

1-1-06 to 6-26-06, \$338,250.03

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, Relief of Penalties, Consent Agenda, upon a single motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Massachusetts Mutual Life Ins. Company, 265294 (ET)

7-1-98 to 9-30-98, \$142,964.40

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Young's Market Company, LLC*, 383605, the Board made the following orders:

Thrifty Payless, Inc., 383563 (ET)

7-1-06 to 6-30-07, \$58,000.00

Action: Approve the refund as recommended by staff.

Young's Market Company, LLC, 383605 (ET)

1-1-04 to 12-31-04, \$64,269.61

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
FEBRUARY 27, 2007**

Eugene Tripp, 286863 (AS)

Final Action: Mr. Leonard moved to redetermine as recommended by the Appeals Division. The motion was seconded by Ms. Steel but no vote was taken.¹

¹ Additional action was taken later in the day.

2007 MINUTES OF THE STATE BOARD OF EQUALIZATION

Tuesday, February 27, 2007

Hosmer Chandler McKoon, 273016 (EA)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu, and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board directed the Appeals Division to prepare a Memorandum Opinion for Board consideration.

The Board recessed at 12:25 p.m. and reconvened at 1:30 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel present and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARINGS

Lexus Plastics, Inc., 181652 (EH)

7-1-97 to 6-30-00, \$94,482.59 Tax, \$9,448.26 Negligence Penalty

For Petitioner: Frank M. Weisner, CPA

For Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the audited amount of unreported taxable sales.

Whether petitioner was negligent.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

James Bess, 286797 (AP)

7-1-01 to 9-21-01, \$197,056.00 Tax, \$19,705.60 Penalty

For Petitioner: James Bess, Taxpayer

Cindy Hawse, Witness

For Department: Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether taxpayer is personally responsible for the liability of West Covina

Chrysler Plymouth Jeep Eagle, LLC.

Whether petitioner has established reasonable cause to relieve the failure-to-file and finality penalties.

Whether the Department collected monies from taxpayer's social security benefits.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

2007 MINUTES OF THE STATE BOARD OF EQUALIZATION

Tuesday, February 27, 2007

Fakheri, Inc., 269581 (AC)

4-1-99 to 8-11-99, \$17,457.58 Tax

Comm. Club, LLC, 269579 (AC)

8-12-99 to 3-31-02, \$123,937.53 Tax

For Petitioner:

Ivan Sotomayor, CPA

Dariusz Fakheri, Taxpayer

Amir Ammona, Taxpayer

For Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Sales and Use Tax Department utilized the proper testing methods, and whether the markups for accessories and SIM cards computed in the audit are excessive and unrepresentative of petitioners' true markups.

Whether an adjustment is warranted to account for SIM cards that were sold with cell phones.

Action: Upon motion of Ms. Steel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Michael Brian McCullough, 295005 (EA)

7-1-00 to 9-30-03, \$909,055.85 Tax, \$90,905.61 Negligence Penalty

For Petitioner:

Graham Hoad, Representative

Michael McCullough, Taxpayer

For Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments should be made to petitioner's tax liability for nontaxable design fees.

Whether petitioner was negligent.

Action: Upon motion of Ms. Mandel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Global Micro, Inc., 273209 (EH)

1-1-99 to 9-30-02, \$102,479.97 Tax, \$00.00 Penalty

For Petitioner:

James F. Berger, CPA

For Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether further adjustments are warranted to the audited overstatement of claimed nontaxable sales for resale.

Action: Upon motion of Ms. Mandel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

2007 MINUTES OF THE STATE BOARD OF EQUALIZATION

Tuesday, February 27, 2007

SPECIAL TAXES APPEALS HEARINGS

Joseph Elias Amash, 261204 (MT)

8-24-98 to 3-19-04, \$00.00 Tax, \$9,449.52 Failure to File Penalty

For Petitioner:

Joseph Amash, Taxpayer

Ron Greenlee, Bookkeeper

For Department:

Carolee Johnstone, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the 10-percent penalty for failure to file returns should be relieved.

Whether relief from interest is warranted.

Action: Upon motion of Ms. Mandel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Mardiros Abadjian and Anouckik Abadjian, 197934 (ET)

10-1-99 to 12-30-01, \$149,356.37 Tax, \$14,935.65 Negligence Penalty

For Petitioner:

Dan Reising, Attorney

Mardiros Abadjian, Taxpayer

For Department:

Monica Brisbane, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is liable for excise tax on the distribution of cigars that it purchased ex-tax from out-of-state original importers.

Whether the Department properly imposed the negligence penalty.

Action: Upon motion of Ms. Mandel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Bharat Bhuptani, 259956 (ET)

5-1-98 to 8-31-99, \$1,307,506.62 Tax, \$451,109.06 Penalty

Source Cigar, Inc., 259697 (ET)

9-1-99 to 3-31-01, \$9,327,858.05 Tax, \$2,371,113.57 Penalty

For Petitioner:

Bryan C. Altman, Attorney

Bharat Bhuptani, Taxpayer

For Department:

Tim Treichelt, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioners are liable for tax on purchases and distribution of untaxed tobacco products.

Whether the 25 percent penalties for fraud or intent to evade are supported by clear and convincing evidence.

Whether relief from the 10 percent penalties to file returns should be granted.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Note: These minutes are not final until Board approved.

2007 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, February 27, 2007****Asher Shaitrit, 198549 (ET)**

5-1-99 to 5-31-01, \$156,600.00 Tax, \$15,660.00 Penalty

For Petitioner:

Asher Shaitrit, Taxpayer

Frederick Phillips, Attorney

For Department:

Monica Brisbane, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has provided sufficient credible evidence to demonstrate that he did not purchase and distribute the unstamped cigarettes in dispute.

Whether petitioner was negligent.

Action: Ms. Steel moved to grant the petition. The motion failed for lack of a second.

Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried,

Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

CHIEF COUNSEL MATTERS**OTHER CHIEF COUNSEL MATTERS****Request for Filing Amicus Curiae Brief**

Kristine Cazadd, Chief Counsel, Legal Department, made introductory remarks and was available to answer questions regarding the filing of the Amicus Curiae Brief (Exhibit 2.14).

Speakers:

Juliet Apfel, Principal Appraiser, Los Angeles County Assessor

Richard Girgado, Deputy County Counsel, Los Angeles County Counsel

Action:

Upon motion of Ms. Mandel, seconded by Ms. Chu and duly carried, Ms. Yee, Ms. Chu, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard voting no, the Board approved staffs recommendation to file an Amicus Curiae Brief.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Action:

Approve Sustained/Superior Accomplishment Award Nominees (Exhibit 2.15).

2007 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, February 27, 2007****PUBLIC HEARINGS****Business Taxpayers' Bill of Rights Hearings**

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Division, made introductory remarks and was available to answer questions regarding the Business Taxpayers' Bill of Rights Hearings (Exhibit 2.16).

Speakers: William Connell, American Surfdog
Robert M. Handy, Veterans United for Truth, Inc.
Sanford D. Cook, Veterans United for Truth, Inc.
Karen Solso-Coogle, Mike and Karen Enterprises
Orsolya Forgo, Associate Attorney, Dakessian & Associates

Property Taxpayers' Bill of Rights Hearings

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Division, was available to answer questions and made introductory remarks regarding the Property Taxpayers' Bill of Rights Hearings.

Speakers: Speakers were invited to address the Board, but there were none.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
FEBRUARY 27, 2007**

Eugene Tripp, 286863 (AS)

Final Action: Mr. Leonard moved to reduce the measure by 20 percent, otherwise redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the measure be reduced by 18 percent, otherwise redetermined as recommended by the Appeals Division.

Rafinity, Inc., 244305 (AS)

Final Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Lexus Plastics, Inc., 181652 (EH)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Note: These minutes are not final until Board approved.

2007 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, February 27, 2007****James Bess, 286797 (AP)**

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Michael Brian McCullough, 295005 (EA)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Global Micro, Inc., 273209 (EH)

Final Action: Mr. Leonard moved to relieve the amnesty penalty, otherwise redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

The Board deferred consideration of this matter. The Board requested staff to investigate the conversation the taxpayer had with staff regarding the amnesty penalty.

FINAL ACTION ON SPECIAL TAXES APPEALS HEARINGS HELD FEBRUARY 27, 2007**Joseph Elias Amash, 261204 (MT)**

Final Action: Upon motion of Ms. Chu, seconded by Ms. Steel and duly carried, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Yee and Ms. Mandel voting no, the Board ordered that the failure to file penalty be deleted, otherwise redetermined as recommended by the Appeals Division. The Board directed staff to offer petitioner a payment plan and to inform the petitioner of the Offer in Compromise program.

Mardiros Abadjian and Anouckik Abadjian, 197934 (ET)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Bharat Bhuptani, 259956 (ET)**Source Cigar, Inc., 259697 (ET)**

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division and directed staff to institutionalize a procedure for noticing petitioners that civil liabilities, penalties and interest are not waived when engaged in a plea bargain agreement in criminal cases.

Asher Shaitrit, 198549 (ET)

Final Action: Ms. Steel moved to reduce the measure from 300 unstamped cigarette cases to 75 cases and otherwise redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

Note: These minutes are not final until Board approved.

2007 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, February 27, 2007**

Ms. Steel moved to delete the negligence penalty, otherwise redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu, and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Chu and duly carried, Ms. Yee, Ms. Chu, and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

CLOSED SESSION

The Board did not meet in closed session.

The Board adjourned at 7:00 p.m.

The foregoing minutes are adopted by the Board on April 25, 2007.

Note: The following cases were removed from the calendar prior to the meeting: *Industrial Service Oil Company, Inc.*, 313527 (EF); *Center for Bio-Ethical Reform*, 271792 (UT).